

JENNINGS & FULTON, LTD.
2580 SORREL STREET
LAS VEGAS, NEVADA 89146
TELEPHONE 702 979 3565 ♦ FAX 702 362 2060

1 ANDREW D. PARKER, ESQ. (pro hac vice pending)
2 Arizona Bar No. 028314
3 E-Mail: parker@parkerdk.com
4 **PARKER DANIELS KIBORT LLC**
5 888 Colwell Building
6 123 N. Third Street
7 Minneapolis, MN 55401
8 Telephone: (612) 355-4100
9 Facsimile: (612) 355-4101

7 ADAM R. FULTON, ESQ.
8 Nevada Bar No. 11572
9 E-mail: afulton@jfnvlaw.com
10 LOGAN G. WILLSON, ESQ.
11 Nevada Bar No. 14967
12 E-mail: logan@jfnvlaw.com
13 **JENNINGS & FULTON, LTD.**
14 2580 Sorrel Street
15 Las Vegas, Nevada 89146
16 Telephone: (702) 979-3565
17 Facsimile: (702) 362-2060

18 *Attorneys for Proposed Intervenor*

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

DENNIS MONTGOMERY, an
individual; and MONTGOMERY
FAMILY TRUST, a California Trust,

Plaintiff,

v.

ETREPPID TECHNOLOGIES, L.L.C., a
Nevada Limited Liability Company;
WARREN TREPP, an individual;
DEPARTMENT OF DEFENSE of the
UNITED STATES OF AMERICA; and
DOES 1 through 10,

Defendants.

CASE NO.: 3:06-cv-00056-PMP-VPC
and
3:06-cv-00145-PMP-VPC

AND ALL RELATED CASE(S)

1 **REPLY MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

2 The Government’s Opposition (Doc. #1232) to Michael Lindell’s Motion (Doc.
3 #1216) takes the position that Mr. Lindell “is not subject to the protective order entered in
4 this case,” that the “protective order does not apply to any litigation but the above-captioned
5 cases in which it was entered,” that “[t]he Protective Order’s prohibitions applied only to
6 ‘discovery or disclosure . . . during all proceedings in these actions,” that “the Protective
7 Order does not bind Lindell in any way,” that “[t]he express terms of the Protective Order
8 present no barrier to [Mr. Lindell’s] use of the “information that Lindell has specifically
9 indicated he needs,” that “the Protective Order entered in this case from which Lindell seeks
10 relief has no relevant effect on the defamation litigation or his ability to obtain or use any
11 information he needs therein,” and that “the Order had nothing to do with the 2020 election
12 or alleged fraud therein.” Opp. at 1, 1, 3, 6, 6, 7, 11. Mr. Lindell accordingly requests the
13 Court enter an Order confirming and adopting the Government’s representations on these
14 specific matters.
15

16 Mr. Lindell has standing to bring his Motion because he is concerned that his use of
17 information received from party Dennis Montgomery might run afoul of the Protective Order
18 (Doc. #253) and he seeks to avoid that outcome. “The courts have widely recognized that the
19 correct procedure for a nonparty to challenge a protective order is through intervention for
20 that purpose.” United Nuclear Corp. v. Cranford Ins. Co., 905 F.2d 1424, 1427 (10th Cir.
21 1990). “[T]here is ample support for intervenor’s argument that courts also recognize Rule
22 24(b) intervention as a proper method to modify a protective order.” Beckman Indus., Inc. v.
23 Int’l Ins. Co., 966 F.2d 470, 472 (9th Cir. 1992). The Government chides Mr. Lindell for
24 taking the cautionary step of bringing his Motion, though the Government previously
25 asserted the Protective Order applied to separate litigation in the Central District of
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1 California. Id. Ex. 13 at 17:2-4, 21:17-18 (“I’m here to enforce the terms of the United States
 2 protective order”). Further, the Government has asserted in communications concerning Mr.
 3 Montgomery that the state secret privilege continues to remain in effect regarding Mr.
 4 Montgomery’s information. Decl. of Dennis Montgomery ¶ 24 & Ex. 10, 11 (Doc. #1216-
 5 2). Entry of an Order confirming and adopting the positions taken by the Government in its
 6 Opposition, quoted above, will address Mr. Lindell’s concerns about the Government’s prior
 7 communications and prevent the Government from taking further inconsistent positions in
 8 the future.
 9

10 CONCLUSION

11 Mr. Lindell requests an Order from the Court stating:

12 1. Mr. Lindell is not subject to the Protective Order entered in this case and it does
 13 not bind him in any way. The Protective Order presents no barrier to Mr. Lindell’s use of
 14 information obtained from Dennis Montgomery.
 15

16 2. The Protective Order does not apply to any litigation except the above-captioned
 17 cases in which it was entered. The Protective Order has no relevant effect on any defamation
 18 litigation involving Mr. Lindell. The Protective Order does not affect Mr. Lindell’s ability to
 19 obtain or use any information in any defamation litigation. The Protective Order has nothing
 20 to do with the 2020 election or alleged fraud therein.
 21

22 3. The Protective Order’s prohibitions apply only to discovery or disclosure during
 23 all proceedings in the above-captioned actions.

24 DATED: October 21st, 2022

JENNINGS & FULTON, LTD.

25 By: /s/ Adam R. Fulton, Esq.
 26 ADAM R. FULTON, ESQ.
 Nevada Bar 11572
 27 E-mail: afulton@jfnvlaw.com
 Attorneys Michael J. Lindell
 28

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b), I hereby certify that I am an employee of JENNINGS & FULTON, LTD., and that on the 21st day of October 2022, I caused a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**, to be served as follows:

- X by depositing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope; or
- by facsimile transmission, pursuant to E.D.C.R. 7.26, as indicated below; or
- X by electronic service, pursuant to N.E.F.C.R. 9 and Administrative Order 14-2, as indicated below:

Edmond “Buddy” Miller, Esq.
Bar No. 3116
STEPTOE & JOHNSON LLP
1610 Montclair Avenue, Suite C
Reno, NV 89509
bmiller@buddymillerlaw.com
Telephone: (775) 828-9898

Attorney for
ETREPPID TECHNOLOGIES, L.L.C. and
WARREN TREPP

Reid H. Weingarten, Esq.
Brian M. Heberlig, Esq.
Robert A. Ayers, Esq.
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
rweingarten@steptoe.com
bheberlig@steptoe.com
rayers@steptoe.com

Dennis L. Kennedy, Esq.
Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
dkennedv@baileykennedv.com
Facsimile: 702-562-8821

Carlotta P. Wells, Esq.
Senior Trial Counsel
Federal Programs Branch
Civil Division – Room 7150
U.S. Department of Justice
20 Massachusetts Ave., NW
P.O. Box 883
Washington, DC 20044
Carlotta.Wells@usdoj.gov
Fax No. 202-616-8470

J. Stephen Peek, Esq.
HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511
speek@hollandhart.com

Greg Addington, Esq.
Assistant U.S. Attorney
100 W. Liberty Street, Suite 600
Reno, Nevada 89501
Greg.Addington@usdoj.gov
Facsimile: 784-5181

JENNINGS & FULTON, LTD.
2580 SORREL STREET
LAS VEGAS, NEVADA 89146
TELEPHONE 702 979 3565 ♦ FAX 702 362 2060

1 Raphael O. Gomez, Esq.
2 Senior Trial Counsel
3 Federal Programs Branch
4 Civil Division – Room 6144
5 U.S. Department of Justice
6 20 Massachusetts Ave., N.W.
7 P.O. Box 883
8 Washington, DC 20044
9 Raphael.Gomez@usdoj.gov
10 Facsimile: 202-616-8470
11
12 Robert E. Rohde, Esq.
13 Gregory G. Schwartz, Esq.
14 Rohde & Van Kampen
15 1001 Fourth Avenue, Suite 4050
16 Seattle, Washington 98154
17 brohde@rohdelaw.com
18 gschwartz@rohdelaw.com
19 Facsimile: 206-405-2825
20
21 Amanda J. Cowley, Esq.
22 Bradley Scott Schrager, Esq.
23 Gary R. Goodheart, Esq.
24 Jones Vargas
25 3773 Howard Hughes Parkway
26 Third Floor South
27 Las Vegas, Nevada 89169
28 acowley@jonesvargas.com
bschrager@jonesvargas.com
grg@jonesvargas.com

Michael James Flynn, Esq.
Flynn & Stillman
P.O. Box 690
Rancho Santa Fe, CA
mjfbfb@msn.com

Ellyn S. Garofalo, Esq.
Liner Yankelevitz Sunshine &
Regenstreif LLP
1100 Glendon Avenue
Los Angeles, California 90024-3503
egarofalo@linerlaw.com

Roland Tellis, Esq.
Marshall B. Grossman, Esq.
Bingham McCutchen LLP
The Water Garden
1620 26th Street, 4th Floor, North Tower
Santa Monica, CA 90404
rolland.tellis@bingham.com
marshall.grossman@bingham.com
Facsimile: 310-907-2000

Ronald J. Logar, Esq.
Law Office of Logar & Pulver, PC
225 S. Arlington Avenue, Suite A
Reno, Nevada 89501
Zachary@logarpulver.com

Bridget Robb Peck, Esq.
Lewis and Roca, LLP
50 W. Liberty Street, Suite 410
Reno, Nevada 89501
bpeck@lrlaw.com
Facsimile: 775-823-2929

Debbie Leonard, Esq.
Leigh T. Goddard, Esq.
John J. Frankovich, Esq.
McDonald Carano Wilson LLP
P.O. Box 2670
Reno, Nevada 89505-2670
dleonard@mcdonaldcarano.com
lgoddard@mcdonaldcarano.com
jfrankovich@mcdonaldcarano.com

Thomas H. Casey, Esq.
The Law Office of Thomas H. Casey, Inc.
22342 Avenida Empresa, Suite 260
Rancho Santa Margarita, California 92688
msilva@tomcaseylaw.com

1 Timothy Ryan O'Reilly, Esq.
2 O'Reilly Law Group
3 325 S. Maryland Parkway
4 Las Vegas, Nevada 89101
5 tor@oreillylawgroup.com

Via U.S. Mail
Dennis Montgomery
6 Toscana Way W.
Rancho Mirage, CA 92770

Via U.S. Mail
The Montgomery Family Trust
6 Toscana Way W.
Rancho Mirage, CA 92770

Via U.S. Mail
Blxware LLC
600 106th Avenue NE, Suite 210
Bellevue, WA 98004-5045

Via U.S. Mail
Offspring LLC
600 106th Avenue NE, Suite 210
Bellevue, WA 98004-5045

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11
12 /s/ Norma Richter
13 An Employee of
14 JENNINGS & FULTON, LTD.
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16
17
18
19
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